QUESTIONS PRESENTED

1. Whether, in determining the ownership of accretions to riparian federal lands, the court of appeals erred in adopting and applying as the federal rule of decision the Arizona law of accretion.

2. Whether, under the circumstances of this case, the United States should be estopped from challenging the validity of petitioners' title.

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In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 81-2250

IVA MAY HARVEY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-50a) is reported at 661 F. 2d 767. The district court's Order Denying Defendants' and Plaintiffs' Motions for Summary Judgment (Pet. App. 51a-70a), Pre-trial Conference Order (Pet. App. 71a-88a), Memorandum and Order Denying Motions for Judgment Notwithstanding Verdict and for New Trial (Pet. App. 89a-104a), and Order re Counterclaims (Pet. App. 105a-112a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on November 16, 1981, and a petition for rehearing was denied on March 10, 1982 (Pet. App. 116a-117a). The petition for a writ of certiorari was filed on June 7, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This suit involves a dispute between petitioners and the United States concerning title to a 27-acre parcel of land located in the lower Colorado River Valley, approximately 17 miles south of Blythe, California. The jury found that the United States held title to the subject tract, known as "Harvey's Fishing Hole," and that verdict was upheld by the district court and the court of appeals. The relevant facts are summarized below.

1. In the immediate area at issue, the Colorado River flows in a general east to west direction, with California located to the north of the river and Arizona to its south. Originally, the United States owned all of the lands on both sides of the river. In 1914, the government issued a patent to a 160-acre tract then located in Yuma County, Arizona, to Cherry S.E. Carlin. In 1952, Carlin's successors-in-title conveyed their interests in a 40-acre portion of the lands described in the 1914 patent to Kindred E. Harvey and Iva May Harvey, husband and wife. Pet. App. 80a-84a.

When the 1914 patent was issued, all of the lands conveyed by it were located south of the river. However, between 1914 and 1935, when the river became stabilized at its present course, the channel moved in a southerly direction so that approximately 27 of the 40 acres described in the Harveys' deed became located on the north bank of the river (Pet. App. 84a, 119a-120a).[1] In 1960, the United States, which had retained title to all of the uplands on the north side of the river,[2] conducted a survey of the lands on

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[1]Approximately six acres of the lands described in the Harvey's deed remain on the south (Arizona) side of the river. The balance of the described 40 acres now form part of the river bed.

[2]The federal lands on the north side of the river were withdrawn from public entry by orders of the Secretary of the Interior issued in 1902 and 1929. These orders have never been revoked.

the north side. The survey depicted as government lands the 27-acre parcel on the north bank of the river, which is now in the same physical location as a portion of the lands described in the Harveys' deed (Pet. App. 85a, 119a-120a). A copy of the survey was filed in the local office of the Bureau of Land Management and notice of the survey was published in the Federal Register. 26 Fed. Reg. 7973 (1961).

In 1956, the Harveys had begun planning and developing a recreational-residential community called "Harvey's Fishing Hole," consisting of 96 lots to be located on the disputed tract. In 1956 and 1957, the Harveys cleared a large portion of the property of natural vegetation in preparation for development. During the same period, Kindred Harvey applied to the State of California for a permit to sell the lots. Thereafter, the permit was granted and the development of the subdivision commenced.[3] In 1958, the Harveys began to sell lots within the subdivision to various third parties. By the time the instant suit was filed in 1972, the Harveys had conveyed approximately 80 lots to third parties. Pet. 9-10; Pet. App. 86a-88a.

In October 1960, the United States filed a condemnation action against the property adjoining and immediately downstream from the lands at issue here. *United States* v. *11.8 Acres, Imperial County, California*, No. 2468-SD-K Civil (S.D. Cal.). In that action, the United States asserted that it owed no compensation because the subject land had been formed by accretion to government-owned lands in California and, therefore, was owned by the United States

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[3] Although the Harveys obtained a California subdivision permit allowing them to do business in California, the permit described the land as being in Yuma County, Arizona (Gov't Exh. 68). The property was carried on the Arizona tax rolls, and the taxes paid accordingly, until 1966, when Congress ratified the Colorado River Boundary Compact by which the two states agreed upon a border settlement under which the subject tract is in California (Pet. App. 86a).

rather than the private defendants (the defendants in the condemnation action, the Beavers, like petitioners here, traced their title to a 1914 federal patent that conveyed lands then located on the Arizona side of the river). The Harveys were served with a complaint in the condemnation suit on October 16, 1960. After the case had been tried, but before a decision had been rendered, the Harveys filed an answer asserting that attempts were being made to have the lands determined and adjudged as accretion lands, and that the determination would affect the rights and titles of the lands of the defendants. They further stated that the lands held by the defendants were in a similar category to the lands described in the cause of action. The government moved to strike the answer and it was later withdrawn without prejudice pursuant to a stipulation. Subsequently, the district court ruled that the condemned land had been formed by accretion and, thus, that the United States had held title to the tract ever since the land had emerged on the California side of the river. The court of appeals affirmed (*Beaver* v. *United States*, 350 F. 2d 4 (9th Cir. 1965)), and this Court denied a petition for a writ of certiorari (383 U.S. 937 (1966)). See generally 350 F. 2d at 6, 10.

With the *Beaver* litigation concluded, the United States, in early 1967, formally notified persons claiming interests in the Harvey's Fishing Hole lands that the tract was owned by the federal government. At the same time, the government extended an existing land use program to the subject lands. The purpose of the program was to allow squatters and trespassers along the lower Colorado River to remain, for a limited period, to use the land they had occupied if they would acknowledge title in the government and pay a reasonable rent. Gov't Exhs. 98, 116. The occupants of Harvey's Fishing Hole declined to participate in this program.

2. The government brought this action seeking ejectment and damages in 1972. In response, the defendants, among other things, asserted that their title was good because the land had arrived at its present location by avulsion rather than accretion and that, in any event, the United States was estopped from challenging the validity of their title. Both sides moved for summary judgment, and both motions were denied (Pet. App. 51a-70a).

The case was tried to a jury on the government's complaint for ejectment and damages and, at the same time, to the court on the defendants' quiet title counterclaim. The government's principal expert witness testified that, beginning during the period 1902-1914, if not earlier, a bend in the river had begun to move progressively toward the subject location, gradually eroding material from the south bank of the river and depositing other material by accretion on the north bank. This natural process continued in the ensuing years so that the 40-acre parcel began to be eroded away. After 1923, a nonfederal party made four river channel cuts upstream, which had the effect of accelerating the erosion and accretion process already underway. By 1930, the expert testified, most of the subject property had emerged on the California side of the river (Tr. 77-128). In opposition to this testimony, the defendants presented witnesses who testified that the change had been an avulsive one. Both sides also presented evidence concerning the estoppel issue.

The district court instructed the jury that it should return a verdict in favor of the government on the avulsion-accretion issue if it found that the subject land had been gradually deposited by accretion; conversely, the verdict should be for the defendants if the jury found the movement to have been caused by an avulsive change. No party

requested that the jury be instructed concerning changes induced or affected by artificial means.[4]

The jury returned a verdict in favor of the United States,[5] assessing damages at $42,451.04 (Pet. App. 118a). On January 14, 1977, the district court denied defendants' motions for judgment notwithstanding the verdict and for a new trial (Pet. App. 89a-104a), and on January 18, 1977, it entered findings of fact and conclusions of law in favor of the government on the defendants' counterclaims (Pet. App. 105a-112a).

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[4]The district court refused to give Defendants' Requested Jury Instruction No. 15 (R. 1008):

> In deciding whether the Colorado River moved by the process of accretion or avulsion, you should consider the respective interests of the parties in the land and whether a finding of accretion will result in a windfall to the U.S. Government or a taking of land from the defendants without compensation. Unless you find the land is necessary for navigational or some related purpose, you should not divest defendants of their title to "Harvey's Fishing Hole" by applying the doctrine of accretion. That is, you should consider the fairness of the end result before you make a finding of accretion or avulsion.

[5]The verdict included the following answers to special Interrogatories (Tr. 982-984):

> 1. Do you find the land now known as "Harvey's Fishing Hole" to have been formed by the process of accretion?
>
> Answer: Yes.
>
> 2. Do you find the land now known as "Harvey's Fishing Hole" to have been formed by the process of avulsion?
>
> Answer: No.
>
> 3. Do you find the Government, through its agents, to have engaged in affirmative conduct amounting to either a [mis]representation or concealment of material facts?
>
> Answer: No.

The defendants then moved for reconsideration or, in the alternative, for relief from the order and judgment. The defendants essentially contended that, while the jury had been instructed pursuant to the general federal common law of accretion and avulsion in accordance with this Court's then-prevailing decision in *Bonelli Cattle Co.* v. *Arizona*, 414 U.S. 313 (1973), that decision had been overruled by *Oregon ex rel. State Land Board* v. *Corvallis Sand & Gravel Co.*, 429 U.S. 363 (1977). According to the defendants, *Corvallis* required that state law, rather than federal law, be applied here. The defendants further contended that the appropriate state law to be applied was the law of California and that, under California law, an upland owner does not acquire title to accretions to his property if those accretions are created by artificial means. Finally, they argued that the evidence introduced at trial showed that

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4. Do you find the Government, through its agents, to have had knowledge, actual or imputed, of the facts surrounding the defendants' title claims to "Harvey's Fishing Hole" at the time of its conduct?

Answer: Yes.

5. Do you find the Government, through its agents, to have intended its conduct to be acted upon by the defendants?

Answer: Yes.

6. Do you find the defendants to have been ignorant of the facts concerning the Government's claim to "Harvey's Fishing Hole" at the time when the conduct of the Government was done and at the time when it was acted upon by the defendants?

Answer: No.

7. Do you find that the defendants relied upon the conduct of the Government to their injury?

Answer: No.

8. Do you find that any of the defendants are liable to the plaintiff, United States of America, for reasonable rental value for occupying land within "Harvey's Fishing Hole"?

Answer: Yes.

"the movement of the Colorado River past Harvey's Fishing Hole was artificially induced and hence not accretion under the California definition of that term." R. 929. The district court denied the motion for reconsideration. Pet. App. 113a-115a.

3. The court of appeals affirmed (Pet. App. 1a-50a). In view of this Court's intervening decision in *Wilson* v. *Omaha Indian Tribe*, 442 U.S. 653 (1979), the court ruled that the district court should have adopted state law as federal law rather than applying general federal common law. The court of appeals, however, rejected the defendants' contention that the state law that should have been adopted as federal law was California law. Rather, the court stated that the district court should have adopted Arizona law as federal law. Nevertheless, the court held, since Arizona law is indistinguishable from the general federal common law for the purposes of this case, no material error had been committed. Pet. App. 15a-24a.

The court of appeals also rejected the defendants' argument that the jury's finding of an accretion, rather than an avulsion, was not supported by substantial evidence. Pet. App. 24a-30a.

Finally, the court of appeals concluded (Pet. App. 30a) that "the trial court correctly instructed the jury on equitable estoppel and that substantial evidence supported the jury's verdict" on this issue as well. The court first stated that, under applicable precedents of the Ninth Circuit, the United States could be estopped in a case involving the federal lands only where, in addition to the usual elements of estoppel, the private litigants "establish equities that, on balance, outweigh the 'inherent equitable considerations which the government asserts as the constitutional trustee on behalf of all the people' " (*id.* at 32a-33a, quoting *United States* v. *Ruby Co.*, 588 F. 2d 697, 705 (9th Cir. 1978), cert. denied, 442 U.S. 917 (1979)) and where the government is

guilty of affirmative misconduct (*id.* at 33a-34a). Reviewing the evidence, the court found that the government had not committed any affirmative misconduct upon which the defendants had relied (*id.* at 35a-43a). Accordingly, the court concluded (*id.* at 43a), "[b]ecause there has been an inadequate showing of equitable estoppel, [it was not required to] consider the additional balancing test required when equitable estoppel is asserted against the government."

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of any court of appeals. Further review by this Court is therefore not warranted.

1. Petitioners contend (Pet. 26-29) that state law controls this case because it is like *Oregon ex rel. State Land Board* v. *Corvallis Sand & Gravel Co.*, 429 U.S. 363 (1977), in which this Court ruled that state law governed, and unlike *Wilson* v. *Omaha Indian Tribe*, 442 U.S. 653 (1979), in which federal law was applied. Like *Wilson*, however—and unlike *Corvallis*, which involved solely nonfederal claims of ownership affected by a stream located entirely within a single state—this case concerns title to lands that have become attached to lands which have been in federal ownership ever since they became part of this Nation. This case therefore is governed by federal law. As the Court stated in *Wilson, supra*, 442 U.S. at 670, and reiterated in *California ex rel. Lands Commission* v. *United States*, No. 89, Orig. (June 18, 1982), slip op. 9, "the general rule recognized by *Corvallis* does not oust federal law in this case. Here, we are not dealing with land titles merely derived from a federal grant, but with land with respect to which the United States has never yielded title or terminated its interest."

2. In *Wilson, supra*, 442 U.S. at 672, this Court recognized that controversies governed by federal law do not always require application of uniform federal rules and

that, in some cases, state law should be borrowed and applied as the federal rule. Petitioners suggest that the courts below were obligated to select California law, rather than Arizona law or general federal common law, as the appropriate standard to be applied here. They further suggest that under California law, an owner of property bounded by a stream does not acquire title to accretions to his uplands holdings if those accretions were artifically induced. Neither suggestion has merit.

In applying Arizona law, the court of appeals faithfully followed *Wilson, supra*, and *Nebraska* v. *Iowa*, 406 U.S. 117 (1972). Here, Arizona and California have entered into a boundary agreement that, like the interstate compact between Iowa and Nebraska, does not explicitly prescribe a choice of law rule but does obligate the parties to respect title to any ceded lands if that title was good in the other jurisdiction.[6] This Court's decisions in *Wilson, supra*, 442

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[6]In ratifying the Interstate Compact Defining the Boundary Between the States of Arizona and California (consented to by Act of Aug. 11, 1966, Pub. L. No. 89-531, 80 Stat. 340), Arizona and California each adopted an identical "preservation of rights" provision, which declares:

> Nothing contained in the provisions of this act * * * shall prejudice the titles, rights or claims of any person, public or private, natural or artificial, to any of the lands herein involved, whether such titles, rights or claims arise or exist upon the basis that the lands affected by the designation of boundary as set forth in the compact and in this act were previously a part of the state of Arizona and have now become a part of the state of California, or were previously a part of the state of California and have now become a part of the state of Arizona, or otherwise * * *.

1963 Ariz. Sess. Laws. ch. 77, § 5, *reprinted in* annotation to Ariz. Rev. Stat. Ann. § 41-522 (West 1974); 1963 Cal. Stats. ch. 859, § 4, *reprinted in* annotation to Cal. Gov't Code § 175 (West 1980).

Compare Section 3 of the Nebraska-Iowa Compact (see *Wilson, supra*, 442 U.S. at 676-677 n.22):

> Titles, mortgages, and other liens good in Nebraska shall be good in Iowa as to any lands Nebraska may cede to Iowa and any

U.S. at 676-678, and *Nebraska* v. *Iowa*, *supra*, counsel that, where such a provision is in effect and a dispute arises concerning lands that were once within one jurisdiction but have passed to the other, the dispute ordinarily shall be governed by the law of the jurisdiction where the land originally was located. Because the land at issue here was in Arizona when it was initially surveyed and patented, Arizona law, rather than California law, should be borrowed as the applicable federal rule.[7]

3. Petitioners also suggest (Pet. 34-41) that the court of appeals erred in construing Arizona law as following the common law rule that an uplands owner requires title to accretions to his property, whether they be naturally or

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pending suits or actions concerning said lands may be prosecuted to final judgment in Nebraska and such judgments shall be accorded full force and effect in Iowa.

[7]Petitioners argue (Pet. 30-34) that the court of appeals' decision to apply Arizona law here is contrary to that court's prior decisions in *United States* v. *Southern Pacific Transportation Co.*, 601 F. 2d 1059 (1979), and *United States* v. *Aranson*, No. 77-2295 (Mar. 30, 1981), withdrawn, Apr. 17, 1981 (Pet. App. 121a-215a). In *Southern Pacific*, however, there was no party asserting a claim based upon title to lands once within Arizona and, hence, there was no occasion to choose between California and Arizona law. By contrast, *Aranson* did apply California law to lands once within Arizona; that opinion, however, has been withdrawn. At all events, any intra-circuit conflict on this issue should be resolved by the court of appeals itself. See *Wisniewski* v. *United States*, 353 U.S. 901 (1957) (per curiam).

Petitioners also assert (Pet. 31-32) that the United States, as owner of the California uplands, cannot "seriously" contend that California law is not applicable here. *California ex rel. Lands Commission*, *supra*, however, disposes of this argument. Moreover, it may be argued with greater force that petitioners cannot complain of the application of Arizona law, since they claim title through a federal patent pertaining to lands in Arizona and, as petitioners themselves point out (Pet. 17), Arizona asserted political jurisdiction over the subject area and petitioners paid Arizona real property taxes prior to 1966.

artificially induced. By statute, however, Arizona has adopted the common law as the rule of decision in its courts insofar "as it is consistent with and adapted to the natural and physical conditions of this state and the necessities of the people thereof, and not repugnant to or inconsistent with the Constitution of the United States or the constitution or laws of this state, or established customs of the people of this state * * *." Ariz. Rev. Stat. Ann. § 1-201 (West 1974). Since no such inconsistent law or established custom has been suggested here, and in the absence of any controlling state court decision, it must be presumed that Arizona would follow the common law rule. *State* v. *Bonelli Cattle Co.*, 107 Ariz. 465, 489 P.2d 699 (1971), aff'd on rehearing, 108 Ariz. 258, 495 P.2d 1312 (1972), rev'd, 414 U.S. 313 (1973), relied upon by petitioners (Pet. 35-41), is not to the contrary. In that case, the Arizona Supreme Court rejected the uplands owner's claim that he was entitled to artificially induced "accretions" on the ground that no accretion had occurred, but rather that the channel had been uncovered "rapidly and perceptibly." 107 Ariz. at 468, 489 P.2d at 702. See 414 U.S. at 317.[8] By contrast, the jury found the present case involves a gradual accretion.[9]

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[8]That this Court, applying federal common law, subsequently concluded that the surfacing of the land was an accretion, rather than an avulsion (414 U.S. at 328-329), has no bearing on the reasoning employed by the Arizona Supreme Court.

[9]Petitioners also contend (Pet. 41-46) that the district court erred in refusing to give Defendants' Requested Jury Instruction No. 15 (see page 6 note 4, *supra*). However, the proposed jury instruction is not supported by this Court's *Bonelli* decision. Rather, on its face, it is a transparent invitation to the jury to decide the case on the basis of sympathy.

4. In any event, the United States would prevail here even if California law were applied. The usual common law rule is that the holder of uplands acquires title to accretions to his lands whether those accretions result from natural causes or are artificially induced. *Bonelli Cattle Co.* v. *Arizona*, 414 U.S. 313, 327 (1973); *County of St. Clair* v. *Lovingston*, 90 U.S. (23 Wall.) 46, 68 (1874). Cal. Civ. Code § 1014 (West 1954) provides:

> Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

Petitioners rely upon the phrase "from natural causes" to read into the California statute the negative inference that an uplands owner does not acquire title to accretions that have been artificially induced.[10] The California courts, however, have not drawn such an inference in disputes involving competing riparian landowners.[11] While the State courts have held that a littoral landowner may not take advantage of artificial devices so as to obtain title to accretions that would otherwise have remained part of the

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[10]Petitioners do not address the question of who, under their view of California law, takes title to the "artificial accretions" if the owner of the uplands to which they have become attached does not do so. The state, as the owner of the bed of the navigable river upon which the accretions have settled and emerged, would seem to have as arguable a claim to the subject lands as petitioners.

[11]Analogously, the California courts have not construed Cal. Civ. Code § 1014 (West 1954) in its narrow, literal sense, as applying only to accretions formed along the banks of rivers or streams, but have applied it as well to alluvion forming along the seashore. See *City of Los Angeles* v. *Anderson*, 206 Cal. 662, 667, 275 P. 789, 791 (1929).

seabed or tidelands (see *California ex rel. Lands Commission, supra*, slip op. 3-4; see also *City of Los Angeles* v. *Anderson*, 206 Cal. 662, 667, 275 P. 789, 791 (1929); *Carpenter* v. *City of Santa Monica*, 63 Cal. App. 2d 772, 147 P.2d 964 (1944)), the California courts follow the usual common law rules in disputes concerning lands along non-tidal rivers and streams. See *Carpenter* v. *City of Santa Monica, supra*, 63 Cal. App. 2d at 787, 147 P.2d at 972 (emphasis added):

> There are no doubt many federal cases, following the leading case of *St. Clair County* v. *Lovingston*, 90 U.S. 46, 23 L. Ed. 59, relied upon by appellant which hold that as between competing upland owners, or as between upland owners and others not claiming tidelands as successors of the state, artificial accretions belong to the upland owner. This is the general common law rule and probably the rule in *this state*. *Forgeus* v. *Santa Cruz County*, 24 Cal. App. 193, 140 P. 1092. An entirely different rule may apply, however, where the upland owner attempts to assert title to lands formed by artificial accretions against the claim of the state, or its successor in interest, that such lands are tide lands.

Accord, *Forgeus* v. *Santa Cruz County*, 24 Cal. App. 193, 199-200, 140 P. 1092, 1094-1095 (1914).

Even if the law were as petitioners suggest, however, the government nevertheless would prevail here because the subject accretion was not "caused" by artificial means. Petitioners based their case at trial on the theory that an avulsion had occurred. This theory was rejected by the jury. By contrast, the government's expert witness testified that the Colorado River, which has had a long history of movement by erosion and accretion in this area before the closure of Hoover Dam, had been moving toward the subject parcel for years before several upstream channel cuts were made

by a nonfederal party, which accelerated the natural river channel movement already well underway. This is thus not a case in which the accretions were artificially induced; the river's movements would have followed the same pattern over time even if no artificial changes had intervened.

5. Moreover, there is good reason to believe the district court was right, in the first place, to apply federal law, without any borrowing from the accretion rules of either Arizona or California. Indeed, in *California ex rel. Lands Commission, supra*, the Court found "dispositive in itself * * * the fact that Congress has addressed the issue of accretions to federal land," referring to Section 5(a) of the Submerged Lands Act of 1953, 43 U.S.C. 1313(a), which declares that accretions to lands acquired or reserved by the United States remain in federal ownership and overrides any contrary State law rule. Slip op. 9-10. See also *id.* at 13-14; 1-2 (Rehnquist, J., concurring).

To be sure, in *California ex rel. Lands Commission*, the Court was dealing with accretions to federal lands along the open coast. But Section 5(a) of the Submerged Lands Act is not so limited. In terms, the provision applies to all "lands beneath navigable waters" covered by the Act, and, as Section 2(a)(1) makes clear, that description expressly encompasses not merely submerged lands and tidelands off the seacoast, but also the bed and banks of non-tidal inland navigable waters. 43 U.S.C. 1301(a)(1), 1313(a). Accordingly, it would seem that, in this context as well, "borrowing for federal law purposes a state rule that would divest federal ownership is foreclosed." *California ex rel. Lands Commission*, slip op. 10.[12]

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[12]Arguably, Section 5 of the Submerged Lands Act was equally applicable in *Wilson* v. *Omaha Indian Tribe, supra*. See 43 U.S.C. 1313(b). But the point was not addressed in that case and, at all events, the question there was *whether* the geographical change was accretive or avulsive. In the present instance, the jury's verdict settles that accretion occurred.

6. Petitioners finally contend (Pet. 46-63) that the courts below erred by adopting an unduly restrictive standard in cases involving attempts to estop the government from asserting its title to federal lands. No special standard applicable solely to litigation against the government is necessary to sustain the result here, however. As between private litigants, the party seeking to estop the other must show not only that the opposing party knowingly misrepresented a material fact, but also that the party invoking estoppel was ignorant of the true facts and that he relied upon the opposing party's misrepresentations to his detriment. *United States* v. *Ruby Co.*, 588 F.2d 697, 703 (9th Cir. 1978), cert. denied, 442 U.S. 917 (1979); *Hampton* v. *Paramount Pictures Corp.*, 279 F. 2d 100, 104 (9th Cir.), cert. denied, 364 U.S. 882 (1960). By its answers to the following interrogatories, the jury unequivocally found the latter two elements missing (R. 983):

> 6. Do you find the defendants to have been ignorant of the facts concerning the Government's claim to "Harvey's Fishing Hole" at the time when the conduct of the Government was done and at the time when it was acted upon by the defendants?
>
> Answer: No.
>
> 7. Do you find that the defendants relied upon the conduct of the Government to their injury?
>
> Answer: No.

These findings were amply supported by the evidence.[13]

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[13]Petitioners, who claim title through a patent conveying lands in Arizona, attempt simply to overlook the obvious fact that the land in question is located on the California side of the river. This fact alone was enough to indicate that there might well be questions concerning the validity of their claims to title. They likewise disregard the fact that, in the 1960 *Beaver* condemnation action, the government successfully asserted that the tract immediately adjoining the subject parcel had been formed by accretion and was therefore owned by the United States.

Although in view of these findings by the jury, the court of appeals did not have to reach the issue, it nevertheless correctly ruled (Pet. App. 42a) that, at least in the absence of "affirmative misconduct," the United States cannot be estopped from asserting its rights by the unauthorized actions or inaction of its agents. This holding is in accord with a long line of decisions by this Court. *Schweiker* v. *Hansen*, 450 U.S. 785, 788-789 (1982); *INS* v. *Hibi*, 414 U.S. 5, 8-9 (1973); *Federal Crop Insurance Corp.* v. *Merrill*, 332 U.S. 380, 384 (1947); *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 408-409 (1917).[14]

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[14]Petitioners claim (Pet. 50) that "no special, extra balancing test nor generally restrictive approach has ever been required by this Court in land title disputes between citizens and the United States." The court of appeals applied no such special test, however, concluding (Pet. App. 43a) that "[b]ecause there has been an inadequate showing of equitable estoppel, we need not consider the additional balancing test required when equitable estoppel is asserted against the government." In any event, this Court has indeed applied stringent rules in estoppel cases involving the federal lands. *Jeems Bayou Fishing & Hunting Club* v. *United States*, 260 U.S. 561, 564 (1923); *Utah Power & Light Co.* v. *United States*, *supra*, 243 U.S. at 409. As this Court explained in *United States* v. *California*, 332 U.S. 19, 40 (1947) (footnote omitted):

> The Government, which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

CAROL E. DINKINS
Assistant Attorney General

LOUIS F. CLAIBORNE
Deputy Solicitor General

JACQUES B. GELIN
ROBERT L. KLARQUIST
Attorneys

AUGUST 1982

DOJ-1982-08